

# TREC Advisor

Texas Real Estate Commission ★ Volume 9, No. 3 • August 1998

## 5 Page Inspection Report Form Adopted

**A**T ITS JUNE 15, 1998 MEETING, TREC adopted a 5-page inspection report form (REI 7A-0). Copies of the form and rule were mailed to each licensed inspector in late June and may be accessed on the TREC web site. Inspectors may immediately use the new form as an alternative to the previously adopted report forms.

Earlier versions of the new form were distributed for comments during the rulemaking process, but only the final version of the new form has been approved for use. Inspectors should review their reports against either the copy mailed to them or available on the TREC web site to determine that they

are using the correct version.

The new form lists the principal systems (structural, electrical, heating/ventilation/air conditioning, plumbing) and individual appliances required for inspection by the TREC Standards of Practice. The last page of the form addresses optional systems which the inspector is not required to inspect, such as gas lines. The form is shorter than the original report form, primarily because sub-items, such as each component of a dishwasher, are not listed with their own check-boxes.

The rule adopting the new report form provides detailed guidelines for its reproduction and use. Inspectors may

use the form as adopted by TREC and attach additional pages of comments as needed, preprint the form with the amount of space for each item that the inspector deems appropriate, or reproduce the form by computer using the amount of space necessary for each comment. TREC also increased the number of exceptions when use of the forms is not required, such as quality control construction inspections of new homes or inspections reported on a form required by a relocation company or a seller's employer, provided a specific notice appears in, or is attached to, the report.

On June 27, 1998, the members of

*Please turn to page 7.*

## New Forms Effective September 1, 1998

ON JUNE 15, 1998, the members of the Commission voted to adopt four new or revised forms submitted by the Texas Real Estate Broker-Lawyer Committee. The new forms are a revised Agreement for Mediation, a revised Addendum for "Back-Up" Contract, a Notice of Termination of Contract, and an Amendment form. Copies of the forms may be obtained on the TREC web site or by mail for \$3.95 per set, including postage and sales tax.

The forms may be used on a voluntary basis immediately. Beginning September 1, 1998, licensees must use the forms when a subject matter addressed by the forms becomes part of the negotiations or transaction. The parties to the contract may use their own forms or a form prepared by their attorneys. For example, a buyer may prepare an amendment to the contract to address specific repairs the buyer desires to have made. If the licensee supplies the form, however, the licensee must use new TREC Amendment, form No. 39-0 and may not use a different form prepared by the licensee's own attorney or the attorney for a

trade association. Commission rules also prohibit a licensee from inserting language in the contract's Paragraph 11, Special Provisions, if TREC has promulgated a form addressing that subject matter.

The revised Addendum for "Back-Up" Contract, TREC No. 11-3, now clarifies the parties' obligations under the "back-up" contract while it is contingent upon the termination of the first contract. The buyer is required to deposit any earnest money and Option fee as provided in the "back-up" contract, but is not otherwise obligated to perform during the contingency period. Among other changes, the addendum now addresses the time for the buyer to give notice of termination if the buyer purchased an option to terminate under Paragraph 7D(1) of the contract.

The Agreement for Mediation, TREC No. 35-0, was revised to provide that it survives closing, thus permitting the parties to rely upon it to resolve disputes which may arise after the sale has been consummated. The addendum also was rewritten to match the style of the other TREC promulgated forms.

The new Notice of Termination of Contract, TREC No. 38-0, is a notice to be used only in accordance with Paragraph 7D(1) of the contract. It is not intended for use as a notice of termination under other provisions of the contract.

The new Amendment, TREC No. 39-0, is a vehicle for modifying an existing contract with regard to the sales price, specific repairs, closing date, extension of the option period or waiver of the right to terminate. A second option fee is required to make an extension of the option period enforceable. Because the contract could be amended more than once in the same transaction, licensees should be careful to date each amendment form in the space provided for that purpose to avoid confusion as to the obligations of the parties.

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**MISSION :** The mission of the Texas Real Estate Commission is to assist and protect consumers of real estate services, and foster economic growth in Texas. Through its programs of education, licensing and industry regulation, the Commission ensures the availability of capable and honest real estate service providers.

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Broker member

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Desktop Publisher  
**Dan White, Jr.**

The TREC Advisor (ISSN 1047-4579) is published by the Texas Real Estate Commission (TREC) as an educational service to licensees in the state of Texas. The purpose of the newsletter is to promote a better understanding of The Real Estate License Act and to inform all licensees of changes affecting laws and practices in the real estate industry. The TREC Advisor is funded through legislative appropriations and subscriptions collected from TREC licensees. The official text of TREC rules is filed with the Office of the Secretary of State, *Texas Register*. TREC encourages reproduction of this newsletter with the appropriate acknowledgments. Subscriptions are available for \$3.00 for two years. Single issues are \$1.00. To order a subscription or a single issue write to: TREC Advisor, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. For information regarding TREC, contact:

Texas Real Estate Commission  
P.O. Box 12188  
Austin, Texas 78711-2188  
(512) 459-6544  
(800) 250-TREC  
<http://www.trec.state.tx.us>  
TREC Fax (512) 419-1623



## TEXAS REAL ESTATE COMMISSION

# Meeting Highlights

Texas Real Estate Commission members met in Austin on Monday, June 15, 1998, and took action on a number of topics. The Commission promulgated a new simplified five-page standard inspection report form and adopted four new contract forms—all of which are discussed in separate articles in this issue of *TREC Advisor*.

Commissioners discussed but took no final action on amendments to the registration form for easement or right-of-way (ERW) agents and a new ERW registration renewal form. There was also discussion regarding where and by whom mandatory continuing education courses could be offered. Current rules do not permit the offering of courses in a broker's office or by Commission members or TREC staff.

In other action, Commissioners approved three payments from the Real Estate Recovery Fund and authorized filing a notice to review 22 TAC Chapter 533 concerning procedural rules and contested cases. The Commission announced that at its next meeting on July 27, 1998, it would consider adopting a rule change to allow license renewal prior to completion of mandatory continuing education (MCE). Under the rule, the licensee would pay a \$200 fee and be required to complete the MCE within 60 days after renewal.

During their meeting in Austin on Monday, July 27, Commissioners approved TREC's legislative appropri-

tions request for the two year period beginning September 1, 1999. Rules were re-adopted governing the canons of professional ethics as part of an ongoing review process. Rules relating to practice and procedure, primarily in rulemaking and disciplinary proceedings, will be considered next.

Action was taken to revise an application form to register easement or right-of-way agents, and to establish a renewal process for registrants. A payment from the Real Estate Recovery Fund and a settlement of a prior payment were also authorized.

The need to examine real estate advertising practices occurring over the Internet, and by other alternative means, was discussed. Commissioners expressed their intent to enforce current rules, regardless of the medium in which ads may appear, and stated their interest in receiving public input concerning advertising trends and future enforcement of advertising rules.

At their next meeting on September 14, Commissioners will consider final action on several proposals including: required announcement during exam preparation courses regarding the prohibition against soliciting or revealing specific real estate test questions or answers, a grace period for completion of mandatory continuing education requirements for license renewals, and eventual discontinuation of the first series of inspection report forms.

## Commission Approves Legislative Appropriations Re-

TREC's Legislative Appropriations Request (LAR) was approved by the Commission at its regularly scheduled meeting on July 27, 1998. The LAR, which will be submitted to the Governor's Office of Budget and Planning and the Legislative Budget Board on August 14, 1998, includes a request for funding for three key issues which were identified in TREC's Strategic Plan (see "TREC Issues Invitation to Participate in Strategic Planning Process," Vol. 9, No. 1, Advisor).

TREC's request includes: (1) funding for additional staff for TREC's enforcement division: an attorney, a case manager, and a legal assistant. These

three positions will help expedite the resolution of complaints; (2) funding for travel for two committees created by the Commission's enabling legislation, the Texas Real Estate Commission Broker-Lawyer Committee and the Real Estate Inspector Committee. The Broker-Lawyer Committee develops standard earnest money contract forms and addenda which are promulgated by the Commission for mandatory use by real estate licensees. The Inspector Committee is charged by statute to recommend to the Commission rules governing real estate inspectors; and (3) funding to permit the limited use of credit cards for licensee fee transactions.

# Technology and the Marketplace Spur Legal Controversy

**K**EEPING UP WITH FASTPACED CHANGES in new approaches to buying and selling property, combined with modern, high-speed, and efficient communications and other "tools of the trade," is creating a challenge for real estate regulatory bodies throughout the nation.

## *Innovative Approaches and Regulatory Challenges*

More and more, state commissions are having to deal with maintaining a balance between allowing the most convenient, efficient, and effective means of conducting real estate transactions, and having to create new ways of protecting consumers to assure that real estate service providers are professional and honest.

One example of such a recent challenge involves a real estate broker who is licensed to practice in the State of Texas. This broker is based within Texas and specializes in the resale of timeshare interests on a nationwide scale.

The broker explains that when potential sellers contact the agency and decide to sell their timeshare interest, they agree to pay a one-time advertising fee to the agency. Payment of the fee then entitles the sellers to have their property listed in the broker's computerized system.

This resale marketing approach depends heavily upon interstate advertising and commerce in the majority of cases. State-of-the-art methods are relied upon to pursue business opportunities through use of telephone communications, advertising in nationwide or regional publications, direct mail programs, and computer system technology, including Internet usage. Although two or more different states may be involved with such transactions, the broker's only physical location is in Texas.

These activities have raised legal questions among various states concerning obligations for compliance with specific jurisdictional requirements for out-of-state brokers. In this instance, both Florida and California have attempted to enforce their individual regulatory requirements when the Texas licensee attempts to do business with

**In Texas, The Real Estate License Act applies to a person who conducts the business of a real estate broker "within this state."**

Florida or California residents, or conducts transactions involving property in those states.

## *State Perspectives Texas*

In Texas, The Real Estate License Act applies to a person who conducts the business of a real estate broker "within this state." While it could be argued that a nonresident broker is acting within Texas when communicating from another state with a Texas resident, the Commission has not previously interpreted the Act that broadly.

Adopted rules of the Texas Real Estate Commission do not require a Texas license for a person to negotiate from another state, or offer property by mail to a Texas resident. Likewise, offering property from another state to a Texas resident by mail does not require a Texas real estate license. Locating and bringing together a buyer or seller through correspondence or telephone does, however, constitute negotiation "if done within the borders of Texas," according to the License Act. Presumably, this rule contemplates the negotiator being physically located in Texas.

## *Florida and California*

The State of Florida has taken the position that brokers and salespersons from outside its state are required to obtain Florida real estate licenses. This

requirement would apply if a broker communicates with any potential buyer or seller, regardless of the residence or location of the potential buyer or seller, as long as the timeshare property discussed is located in Florida. Furthermore, Florida strictly prohibits a broker or salesperson from collecting an advance fee for the listing of any timeshare. Lastly, Florida contends that real estate companies from outside the state may be required to obtain a Certificate of Authority from the Florida Department of State in order to continue to engage in interstate commerce involving Florida timeshares.

Florida has initiated legal action to stop the non-resident broker from collecting what it considers to be advance fees, as well as prohibit operation within Florida without a broker license issued by the state. This case is currently in its early stages, and it may be some time before any decision is reached by the court.

Similarly, the State of California has taken the position that real estate companies from outside its jurisdiction must obtain a California real estate broker's license and comply with its statutes and regulations (particularly requirements relating to fees and prior approval of advertisements) in order to continue to offer interstate resale services to California residents.

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A BROCHURE titled "Manufactured Housing Consumer's Guide" is available from the U.S. Department of Housing and Urban Development (HUD). This information and much more is available from the HUD web site at [www.hud.gov/](http://www.hud.gov/).

# Questions and Answers Regarding Use of the New Inspection Report Form

**1. Q: Is use of the new form mandatory?**

**A:** Not at this time. The inspector may use either the new form, REI 7A-0, or the applicable report forms previously adopted by TREC.

**2. Q: Are there exceptions from the mandatory use of TREC report forms?**

**A:** Yes. In addition to transactions in which a federal or state law requires use of a different form, the inspector is not required to use the TREC forms for quality control construction inspections of new homes, inspections of remodeling, re-inspections, or for inspections performed for a lender or a person other than the prospective buyer or prospective seller.

**3. Q: What are "quality control construction inspections of new homes"?**

**A:** As used in the rule, 22 TAC §535.223, they include phased inspections, such as the inspection of the slab after it has been poured; inspections performed solely to determine compliance with building codes, warranty or underwriting requirements; or inspections required by a municipality.

**4. Q: Why has the Commission not required use of a single form at this time?**

**A:** It could be disruptive to require all reports to be made on the new form immediately, and inspectors will need some time to adjust to the new form or develop computer versions of it. Others may wish to exhaust their supplies of the earlier forms.

**5. Q: How much longer may inspectors continue to use the original 14-page report form?**

**A:** The Commission has proposed

elimination of the use of the original forms effective January 1, 1999.

**6. Q: May inspectors modify report form REI 7A-0?**

**A:** Yes, to the extent permitted by the rule adopted by the Commission. The inspector may select the type and size of the fonts (so long as they are no smaller than those used in the adopted form); use legal sized paper; insert additional information in the space shown for the name of the client, address and licensee identification on the first page; insert additional information in the space provided between the two double lines on the first page (so long as the caption "Additional Information Provided By Inspector" is not deleted); delete inapplicable provisions relating to the optional systems; add footers to each page (except page one) and add headers to each page.

**7. Q: What about the space for comments?**

**A:** The inspector may expand or contract the space for comments as the inspector deems appropriate in the report, whether the report is pre-printed or computer-generated. The inspector also may add additional pages of comments to the report, but the comments must be arranged to follow the same sequence of items listed in the report. The inspector may renumber the pages of the report to correspond with deletions or additional pages. The inspector may list other built in appliances on page four and add boxes, letters and captions for those items. Finally, the inspector may add reference numbers or letters in parentheses to the right of an item's caption and put the address or property identification and page number either at the top or bottom of the page.

**8. Q: May the inspector preprint the form with ruled lines for comments?**

**A:** Yes.

**9. Q: If none of the optional systems are being inspected, may the inspector delete all of page five without a notation to that effect?**

**A:** Yes. The notation required by the departure provisions of the Standards of Practice, 22 TAC §535.222, does not apply to the optional systems.

**10. Q: May the check boxes on the form be replaced with circles or brackets?**

**A:** No.

**11. Q: May an inspector delete the words "comments" on each item to save space?**

**A:** No. Deletion of text is not permitted except as allowed by the rule. Deleting "comments" could also cause a novice client to assume no comments were ever necessary in a report.

**12. Q: When does the rule require the inspector to provide a copy of REI 7A-0 to the person for whom the inspection is being performed?**

**A:** The rule does not require the report to be provided within a specific time, because the circumstances and complexity of the inspection may affect the time required to complete a report. Where no specific time is required by a rule, it is implied that the required action take place within a reasonable time, which will vary from inspection to inspection. For many inspections, a reasonable period of time to provide the report would be two or three



## How does the inspector complete the report if an item is inspected, no repairs are necessary and no comments are needed?

days at most.

**13. Q: May an inspector provide an oral report to a client prior to the delivery of REI 7A-0?**

**A:** Yes.

**14. Q: May an inspector provide only an oral report if that is what the client wants?**

**A:** No.

**15. Q: May an inspector provide a different report to a client prior to the delivery of REI 7A-0?**

**A:** No, providing a different report first would violate the rule. The inspector could provide a different report as an attachment to REI 7A-0 [see §535.223(b)].

**16. Q: May the inspector add such things as the time of day of the inspection or the temperature to the first page?**

**A:** Yes, either in the space for identification of the property and client, or in the space set aside for information from the inspector. The inspector may not delete the information and captions required to be provided by the rule. Note: If the space for other information provided by the inspector is inadequate, the inspector must attach any additional pages at the end of the report or use legal sized paper to provide additional space. The rule does not permit the inspector to continue the additional information on page two of the form.

**17. Q: How does the inspector complete the report if an item is inspected, no repairs are necessary and no comments are needed?**

**A:** The inspector marks the "I" (Inspected) box for that item.

**18. Q: How does an inspector complete the form if an item required for inspection by the Standards of Practice, such as a food waste disposer, is not present in the property?**

**A:** The inspector would mark the "NP" (Not Present) box for that item.

**19. Q: How does the inspector complete the form if an item, such as garage door operator is present, but the inspector does not wish to inspect it?**

**A:** If the client agrees that an item is not to be inspected, the inspector may exclude the item and mark the "NI" (Not Inspected) box for that item. NOTE: Inspectors sometimes state they do not "do" particular items such as evaporative coolers, which are listed for required inspection in the Standards of Practice. Failing to obtain the agreement of the client to exclude the items violates the Standards of Practice.

**20. Q: How would the inspector complete the form for an item which is inaccessible or which cannot be inspected due to conditions beyond the control of the inspector?**

**A:** The inspector would mark the "NI" box but must supply an explanation in the comments section as to the reason.

**21. Q: Unlike the earlier report form, there are no sections in form REI 7A-0 for individual bathrooms, water heaters, or heating/cooling units. Where would the inspector indicate in which room or unit repairs are needed?**

**A:** In the comments section of the particular system involved.

## Rule Reviews

AS PART OF ITS RULE REVIEW PLAN, TREC is conducting a review of 22 TAC Chapter 533, which concerns procedural rules governing rulemaking, disciplinary matters, and appeals. If the Commission determines that the reasons for adopting the original rules in Chapter 533 still exist, it may readopt Chapter 533. If comments indicate that the rules should be amended or repealed, the Commission may propose those actions. Comments should be mailed to the Office of the General Counsel, P. O. Box 12188, Austin, Texas 78711-2188, no later than September 10, 1998, to be considered at the TREC meeting scheduled for September 14.

The Commission has announced its intention to review Chapter 534, concerning general administration, and will also discuss comments on the rules in that chapter at the September 14 meeting. These rules address the charges for copies of public records and processing fees for dishonored checks issued to TREC.

No comments were received during the rule review of Chapter 531, concerning canons of professional ethics and conduct for real estate licensees, and the Commission has readopted Chapter 531 in its current language.

### INTERNET IS ADVERTISING



AT THE JULY 27, 1998 MEETING of the Commission, licensees were reminded that web-pages and mass distribution email constitute advertising and any messages posted thereon are governed by 535.154, 535.221, and 535.300 of the Rules of the Texas Real Estate Commission. The Commission is currently reviewing the procedures governing advertising by licensees and welcomes any input on this subject. Comments should be sent to the Administrator at the TREC office address.

# Disciplinary Actions

As of June 1998

**Baezner-Land, Vicki (Houston); license #340771** Agreed reprimand of salesperson license, entered May 11, 1998 while leasing property in her own name, altered the lease to add sub-tenants without the knowledge or consent of the lessor in violation of §15(a)(3)

**Barnes, Brenda Kate (Beaumont); license #349274** Agreed fully probated 30-day suspension of salesperson license, effective June 1, 1998 incorrectly filling out Section 8 of the parties' contract causing confusion among the parties regarding broker representation in violation of §15(a)(6)(D)

**Clouser, Ernest Frederick (Houston); license #141036** Agreed reprimand of broker license, entered June 11, 1998 failing within a reasonable time to make good a check issued to the Commission in violation of §15(a)(4) failing to pay the returned check processing fee within 15 days after the Commission has mailed the request in violation of 22 TAC §534.2(b)

**Fambro, James Richard (Plano); license #226878** Agreed fully probated 3 year and 5 months suspension of broker license, effective May 8, 1998 criminal conviction for two counts of making a false statement to a federally insured bank, aiding and abetting, in violation of §4(a) of Article 6252-13c

**Flood, Fannie Rose (Killeen); license #286851** Agreed 3 month suspension of broker license, probated for 1 year, effective May 1, 1998 permitting a salesperson with an expired license to hold himself out in advertisements as an active agent under her sponsorship and to negotiate and execute a listing agreement with an expectation of compensation in violation of §15(a)(6)(P) and §15(a)(6)(S) submitting an application for late renewal of a salesperson's license whom she intended to sponsor which contained a false statement that the salesperson had not engaged in real estate activity while his license was expired in violation of §15(a)(2)

**Hooks, Russell Brent (Bryan); license #308673** Revocation of salesperson license, effective May 15, 1998 failing to provide required information with a license renewal in violation of 22 TAC §535.91(a)

**Hulshizer, Scot Alan (Austin); license #443052** Revocation of salesperson license, effective June 30, 1998 failing to provide information to the Commission in response to the Commission's request for same in connection with an application for renewal of real estate salesperson license in violation of §535.91(a)

**Lamb, Vickie S. (Austin); license #388140** Revocation of salesperson license, effective June 15, 1998 failing to provide information to the Commission in response to the Commission's request for same in connection with an application for renewal of real estate salesperson license in violation of 22 TAC §535.91(a)

**Landry, Paula Rhoads (Houston); license #205782** Reprimand of broker license, entered May 22, 1998 failing within a reasonable time to make good a check issued to the Commission in violation of §15(a)(4)

**Licon, Juana Norma (El Paso); license #343203** Revocation of salesperson license, effective May 11, 1998 4 violations of failing within a reasonable time to account for or remit earnest money and commingling earnest money in violation of §15(a)(6)(E)

**Nichols, Clevell Oliver (Dallas); license #231924** Agreed fully probated 6 month suspension of broker license, effective June 12, 1998 Agreed administrative penalty entered June 12, 1998 failing and refusing to refund down payment deposits to two sets of clients, acting as both a real estate broker for other persons and as a principal in his own name in violation of §15(a)(3), §15(a)(6)(B), §15(a)(6)(E), §15(a)(6)(V), and §15(a)(6)(W)

**Okolie, Wilfred Osita (Houston);**

**license #385371** 6 month fully probated suspension of broker license, effective May 15, 1998 placing escrow money in an account that was not a trust or escrow account and failing to return the funds to the buyer even after the seller directed him to do so in violation of §15(a)(6)(E)

**Pickett, Selser Robert, III (Dallas); license #125868** Agreed Reprimand of broker license, entered June 16, 1998 Agreed administrative penalty entered June 16, 1998 negligent supervision of real estate salesperson under his sponsorship who continued to act as a real estate agent for another for compensation although her license had expired in violation of §1(c), §15(a)(6)(F), §15(a)(6)(S), and §15(a)(6)(W)

**Richard, Delores Marie (Beaumont); license #236504** Agreed fully probated 60-day suspension of broker license, effective June 1, 1998 threatening for collection of a commission absent a written agreement required by 20(b) in violation of §15(a)(6)(R)

**Robles, Cynthia Campos (Austin); license #385885** Revocation of salesperson license, effective June 30, 1998 payment of \$27,540.82 made by the Texas Real Estate Commission from the Real Estate Recovery Fund toward satisfaction of a judgment against her, in violation of §8(i) of the Act

**Tompkins, Patricia Ann (Dallas); license #421211** Agreed fully probated 6 month suspension of salesperson license, entered June 29, 1998 continuing to act as real estate sale person for compensation for another although her license had expired in violation of §15(a)(5), §15(a)(6)(V), and §15(a)(6)(W)

**Valenciano, Tina Maria (Austin); license #449334** Revocation of salesperson license, effective June 30, 1998 failing to provide information to the Commission in response to the Commission's request for same in connection with an application for renewal of real estate salesperson license in violation of

## Inspection Report Form continued from page 1.

the Commission discussed and approved a series of questions and answers about the new form and rule (see article, page 4).

TREC also has proposed the elimination of the original 14-page report and series of optional system reports which inspectors were originally required to use beginning January 1, 1998. Final action to adopt an amendment eliminating use of these earlier forms could come at the TREC meeting scheduled for September 14, 1998.

## Big Changes in MCE

THE COMMISSION has proposed a change to the Mandatory Continuing Education (MCE) rules for real estate licensees that may affect each licensee who is subject to MCE. The text of this rule can be found on the TREC web site.

Under current rules, a licensee who is subject to MCE but fails to satisfy the requirement during the period of the license being renewed, has the license revert to inactive status effective the first day of the new license period. This process causes some licensees to become inactive inadvertently. In addition, it causes any salespersons sponsored by brokers who become inactive to be made inactive as well, through no fault of their own.

The proposed rule would alter the process as follows. When a licensee subject to MCE renews a license in active status, the license will remain active without regard to whether the MCE requirement had been satisfied. However, if the MCE hours are not completed by the expiration date of the license being renewed, the licensee will be required to pay a \$200.00 fee and still be required to complete the required MCE within 60 days.

Most licensees complete the required MCE hours early and renew their license without a problem. But the few that wait until the last minute and cannot complete the requirement before the expiration date will be subject to these provisions.

## TREC and Real Estate Center at Texas A&M Join in Production of Info-Video

INFORMATION PRESENTED IN A "CLEAR AND ENGAGING WAY," is how Texas Real Estate Commission (TREC) Chairman Jay Brummett describes a new info-video jointly produced by the Commission and Real Estate Center at Texas A&M University. This 17 minute video, titled "How to Use Paragraph 7D(1)," is meant to inform members of the real estate profession and general public about new standard real estate contract form provisions recently approved and promulgated by the Commission.

### *Productive Partnership*

Chairman Brummett said, "This particular project demonstrates how the Commission and Real Estate Center can work together in partnership. Without the dedicated assistance and talent provided by the Center this information could not have been made available in such a clear and engaging way."

### *Expertise and Talent*

All of the individuals portraying various roles are actual brokers or salespersons licensed by TREC who volunteered their time on the project. Cast members include Camille Abbott, Lynn Gary, Christine Heagerty, James Innes, George Sears McGee, Becky Stento, and Socar Thomas.

Wendell Fuqua of the Center was Director/Producer for the taping, editing, and overall coordination of the project.

### **How The Option Clause Works**

The "option clause" is referred to technically as "Paragraph 7D(1)" in the new standard real estate contract form. It allows buyers and sellers to negotiate a specified length of time during which a house is placed under binding contract to be sold, but allows buyers to rescind the contract for any reason during the option period. In exchange for agreeing not to sell the house to others during that period, the seller is entitled to receive a fee, which may be credited toward the sale price, from the prospective buyer in the amount agreed to per their negotiation of the option.

In this way, buyers will have a clearly defined time in which to fully evaluate the condition of the property, and perhaps renegotiate their initial offer based on inspections or needed

"...this is a 'win, win, win...' option for buyer, seller, and agent alike."

repairs. As an alternative to renegotiation, buyers may either terminate the contract along with a forfeiture of their option fee to the seller, or they may proceed to purchase the house under the existing contract. Sellers, on the other hand, would not only receive the benefit of an incentive payment, but also avoid jeopardizing an ongoing transaction during the option period that could ultimately result in a final sale. As the video points out, this is a "win, win, win..." option for buyer, seller, and agent alike.

The Commission notes, however, that in the contract forms promulgated by TREC, consumers have a legally guaranteed and unrestricted right to have a property inspected before making any final decision to purchase. Buyers may exercise their prerogative for an inspection regardless of the "option clause," and nothing in the "option clause" will interfere with provisions allowing prospective buyers to have an inspection completed on property that is being sold.

### *Video Copies Available*



Copies of the video are available from the Real Estate Center for a charge of \$10.83 to help defray duplication and handling costs. The Real Estate Center may be contacted by writing to the Real Estate Center Publication Room, Mail Stop 2115, Texas A&M University, College Station, TX 77843; or by Fax at 409-845-0460. The Center may also be reached by calling 409-845-2031, or 800-244-2144.

## Technology and the Marketplace continued from page 3.

### *Interstate Commerce Issues*

Those opposed to applying individual state-by-state mandates feel that such requirements discriminate against interstate commerce in favor of local business.

They argue that these requirements create undue financial burdens on real estate service providers who would have to meet each state-by-state provision in such areas as licensing, education and reporting requirements; advertising approvals; strict limits or a ban on advance advertising fees; or a requirement that business must be conducted from offices within the state.

Out-of-state providers further contend they would be subjected to these inconsistent or different requirements for interstate commerce transactions that are essentially the same among various states. This raises the core issue of, not only economic and legal compliance burdens, but constitutional implications as well.

### *Federal Court Involvement*

In response to efforts by Florida and California to enforce their state requirements on nonresident brokers, the Texas-based broker has filed suit in federal court on the grounds that such enforcement unduly burdens interstate commerce and is, therefore, unconstitutional. The broker seeks a court order to prohibit Florida and California from enforcing their requirements against the company.

This case is pending in U.S. Federal

District Court. Similar to the Florida state case, the federal case is in a preliminary phase during which the parties involved are engaged in a process of information gathering and determining procedural arrangements.

### *Setting Precedents*

A federal court decision in this case may well provide guidance for all states who may be currently assessing whether, or how, their own licensing and other regulatory requirements might be applied under new business and technology scenarios.

Under what is known as "long arm" jurisdiction, a state generally has the authority to regulate the conduct of nonresidents who establish sufficient minimum contacts in the state. In previous cases pertaining to solicitations by other nonresident businesses (not involving real estate brokers), courts have traditionally upheld state jurisdiction when a nonresident transmits information into the state.

Recent trends in real estate transactions may well produce the need for innovative regulatory measures among all state jurisdictions in terms of both new regulations and enforcement. Real estate commissions throughout the nation will be awaiting judicial determinations to help define future state regulatory initiatives within the legal parameters of interstate commerce provisions, consumer interests, and market viability.

### **Employee of the Quarter**

TREC IS PROUD TO ANNOUNCE that Debbie Orosco recently received the Employee of the Quarter award for March 1998 - May 1998.

Debbie, who works in the Education Section, began employment with TREC on October 1, 1984. Debbie's primary responsibilities are: reviewing education provider, course and instructor applications, processing MCE completion documents, monthly school reports and assisting the public both in person and on the telephone. She is a team player and often assists employees in other sections. Her eagerness makes her an asset to the Commission.

*TREC commends Debbie's dedication and is pleased to recognize her performance.*

### **TEXAS REAL ESTATE COMMISSION** ***Calendar of Events***

#### **September**

Texas Real Estate Commission  
September 14, 1998 — Austin

#### **October**

Texas Real Estate Commission  
October 26, 1998 — Austin

#### **December**

Texas Real Estate Commission  
December 7, 1998 — Austin

Website: <http://www.trec.state.tx.us>

TRECFax: (512) 419-1623

Phone: (800) 250-TREC (8732) or  
(512) 459-6544